

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CRIMINAL ACTION NO. H-00-520-1
	§	
PORTER LEE BUSH,	§	
	§	
Defendant.	§	

ORDER

On January 5, 2009, this court denied Bush's motion for his federal and state sentences to be served concurrently. (Docket Entry No. 111). This court also denied his motion to be placed in the Federal Detention Center.

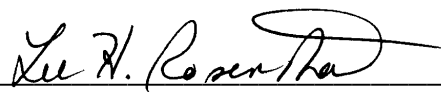
Bush filed his notice of appeal on February 11, 2009. (Docket Entry No. 112). Although he acknowledges that his notice of appeal is untimely, Bush seeks to reopen the time for filing an appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure. This provision applies to an appeal in a civil case. Construed liberally, Bush appears to be seeking leave to proceed under Rule 4(b)(4) of the Federal Rules of Appellate Procedure. In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the entry of either the judgment or the order being appealed. FED. R. APP. P. 4(b)(1)(A). Bush's notice of appeal was due on January 20, 2009. Rule 4(b)(4) of the Federal Rules of Appellate Procedure provides, "Upon a finding of excusable neglect or good

cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).” This provision allows the Court to grant an extension upon a finding of excusable neglect or good cause, but only if the motion for extension is filed within 30 days of the original appellate deadline. *See* FED. R. APP. P. 4(b)(4).

This court denied Bush’s motions on January 5, 2009. Bush explains that he did not receive this court’s order until January 30, 2009 because it was initially sent to the wrong address. (Docket Entry No. 112, p. 1). Bush filed his notice of appeal on February 11, 2009. Bush acted diligently in filing his notice of appeal. The court finds that Bush has shown good cause for the delay in filing his notice of appeal. In this case, Bush has filed his “Notice of Appeal” within the thirty day period following the deadline for filing an appeal.

Bush’s motion for extension of time to appeal, (Docket Entry No. 112), is granted.

SIGNED on March 4, 2009, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line.

Lee H. Rosenthal
United States District Judge